

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
CLEVELAND DIVISION

UNITED STATES OF AMERICA,)	CRIMINAL NO.: 1:21-cr-226
)	
Plaintiff,)	
)	JUDGE PAMELA A. BARKER
vs.)	
)	
)	
DAVIS LU,)	
)	
Defendant.)	

**UNOPPOSED MOTION TO CONTINUE PRETRIAL
MOTION DEADLINE, FINAL PRETRIAL AND JURY TRIAL**

AND NOW comes the Defendant, Davis Lu, by and through his counsel, Friedman & Nemecek, L.L.C., and makes the within Motion to Continue and extend the relevant proceeding dates and, in support thereof, avers as follows:

1. A sealed Indictment was filed against the Defendant on April 1, 2021, alleging the following offense, *to wit*: one (1) count of Intentionally Damaging Protected Computer(s) in violation of 18 U.S.C. § 1030(1)(5)(A), (c)(4)(A)(i)(I), (c)(4)(A)(i)(VI), and (c)(4)(B)(i). (Doc. No. 1). The Defendant was arrested in Houston, Texas, on April 14, 2021 and appeared in court that same day. The Defendant was granted an appearance bond (Doc. No. 5-4) and ordered release subject to various terms and conditions. (Doc. No. 5-6).

2. The Defendant appeared with counsel for an arraignment hearing on May 4, 2021. At that time, the Defendant entered a plea of “Not Guilty” to the foregoing charge. The Court accepted the plea and ordered that the previously imposed bond conditions remain in effect.

3. Thereafter, the Court issued a Trial Order scheduling the matter for a final pretrial conference on July 8, 2021 and Jury Trial on July 12, 2021. (Doc. No. 11). The Order further provided that all pretrial motions were due to be filed on or before June 24, 2021. (Doc. No. 11).

4. Defense counsel promptly served its discovery request on the Government. On or about May 12, 2021, Assistant United States Attorney Daniel Riedl (“AUSA Riedl”) provided counsel with the Government’s initial discovery response.

5. The undersigned submits that the documents provided by AUSA Riedl are voluminous and complex, including not only written reports by agents involved in the investigation, but also documents relating to the corporate servers that the Defendant is alleged to have unlawfully accessed and/or damaged. Counsel is still in the process of reviewing these discovery items.

6. Furthermore, counsel intends to retain an expert to assist with analyzing the forensic evidence in this case. In addition to reviewing the relevant discovery materials, the expert may need to conduct independent testing and/or analysis of some of the electronic evidence that is at issue in this case. After completing such examination(s), the expert will analyze the evidence and consult with the undersigned concerning potential issues and/or defenses based upon the examination. The expert will then need to generate a report and provide it to defense counsel for use in preparing any pretrial motions and in anticipation of any expert testimony that may be required prior to or during trial in this case.

7. Counsel submits that a continuance of the motion deadline, final pretrial and trial dates is needed in order to complete its review the discovery materials and to prepare an effective defense to the allegations. Moreover, the undersigned needs additional time to retain an expert witness to review and/or examine the relevant electronic evidence in this case, and to allow counsel sufficient time to prepare any pretrial motions that may be warranted.

8. Reviewing the evidence and consulting with an expert witness are essential to a determination as to any potential defenses that Defendant might have at trial, including whether certain pretrial motions pertaining to the forensic evidence are warranted and/or necessary. Because these tasks cannot be completed prior to the deadlines set forth in the Trial Order, the undersigned requests that the Court continue the pretrial motion deadline as well as the final pretrial and trial hearings.

9. In light of the complexity of this case, the voluminous discovery materials and the need for further review and investigation, it is respectfully submitted that additional time is needed and that the ends of justice are served in granting this request. The Defendant thus acknowledges that the extension of time caused by this continuance constitutes excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161, *et. seq.* Furthermore, counsel submits that Defendant's right to due process of law and effective representation outweigh the best interest of the public and the Defendant to a speedy trial, 18 U.S.C. § 3161(h)(7)(A), since, for the reasons stated herein, the failure to grant such continuance would deny counsel for Defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence, 18 U.S.C. § 3161(h)(7)(B)(iv).

10. The Defendant respectfully submits that the instant continuance is sought for the above-stated reasons and not for purposes of undue burden or delay. Moreover, the undersigned maintains that Defendant is not at fault in causing any delay. Since the arraignment, the undersigned has worked diligently in its representation of the Defendant. Counsel promptly served the Government with a request for discovery and has been reviewing the materials that were recently provided by the Government. Counsel will continue to make all reasonable efforts to expedite this litigation, including retaining an expert witness and coordinating any independent testing or analysis of the electronic evidence at the earliest practicable time.

11. The undersigned has discussed the instant request with AUSA Riedl, who indicated that the Government does not oppose a continuance of these proceedings.

WHEREFORE, the Defendant, Davis Lu, hereby respectfully requests that this Honorable Court continue the presently scheduled pretrial motion deadline, final pretrial and trial dates so as to allow counsel the opportunity to obtain and adequately review the evidence, coordinate any independent forensic examination(s) that may be deemed necessary, and file any pretrial motions that are warranted in this case.

Respectfully submitted,

DAVIS LU
By counsel

Dated: May 28, 2021

/s/ Eric Nemecek
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was filed by CM/ECF on the 28th day of May, 2021, which will send a notification of such filing electronically to the following: Daniel Riedl, Assistant United States Attorney, 801 Superior Avenue, Cleveland, OH 44113.

Respectfully submitted,

/s/ *Eric Nemecek*

ERIC C. NEMECEK
IAN N. FRIEDMAN
Counsel for Defendant